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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,155	12/15/2003	Nicholas A. Sceusa	SCEUSA3A	2090
1444	7590	02/10/2005	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			PAK, JOHN D	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p style="text-align: center;">Office Action Summary</p>	Application No. 10/734,155	Applicant(s) SCEUSA, NICHOLAS A	
	Examiner JOHN PAK	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-11 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/15/03</u> | 6) <input type="checkbox"/> Other: ____ |

Claims 1-11 are pending in this application.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 3, 13-16, drawn to method for inhibiting the calcium ion excitation secretion cascade by administering at least one metal ion, wherein the animal to be treated suffers from an autoimmune disease which causes secretions and eruptions via the calcium cascade, classified in multiple subclasses in classes 424 and 514 depending on the metal ion and the anionic species, such as class 424, subclasses 601-602, 604, 606, 608, 610-611, 614, 617-656, 670-671, 677-698, 715, 717, 722, class 514, subclasses 492-505, 557-560.
- II. Claim 4, drawn to method for inhibiting the calcium ion excitation secretion cascade by administering at least one metal ion, wherein the animal to be treated suffers from rhinitis, classified in multiple subclasses in classes 424 and 514 depending on the metal ion and the anionic species, such as class 424, subclasses 601-602, 604, 606, 608, 610-611, 614, 617-656, 670-671, 677-698, 715, 717, 722, class 514, subclasses 492-505, 557-560, 849.
- III. Claim 6, drawn to method for inhibiting the calcium ion excitation secretion cascade by administering at least one metal ion, wherein the animal to be treated suffers from a herpes virus infection, classified in multiple

subclasses in classes 424 and 514 depending on the metal ion and the anionic species, such as class 424, subclasses 601-602, 604, 606, 608, 610-611, 614, 617-656, 670-671, 677-698, 715, 717, 722, class 514, subclasses 492-505, 557-560, 934.

Applicant is *further required* to elect for examination purposes a single disclosed species of a metal ion, such as for example, zinc, mixture of zinc and copper, or magnesium.

Claims 1-2, 5, 7-12, 17-18 link inventions I, II and III. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 1-2, 5, 7-12 and 17-18. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no

longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The three inventions are distinct, each from the others, because they are each directed to treating different types of diseases. A method of treating autoimmune disease is clearly divergent and distinct from a method of treating rhinitis or herpes infection. The different diseases have acquired a separate status in the art for different treatment protocol in the absence of a nexus type art. A search for one disease condition is not likely to turn up relevant results for the other two disease conditions. Given the breadth of the metal ions claimed herein (all known metal ions possible), the search and examination for more than one disease condition category would place an undue burden on the Examiner if the restriction were not required.

Therefore, for reasons of distinctness and undue burden, the restriction requirement as set forth above is deemed to be proper.

A telephone call was made to Jay Finkelstein on 1/18/2005 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Gary Kunz, can be reached on **(571)272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JOHN PAK
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